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C O N F I D E N T I A L SECTION 01 OF 03 MANILA 003166

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TAGS: [PREL](#) [MARR](#) [KCRM](#) [CASC](#) [RP](#)

SUBJECT: CASE OF U.S. MARINE LCPL SMITH: CURRENT STATUS;  
NEXT STEPS

REF: MANILA 2445 AND PREVIOUS

Classified By: Ambassador Kristie A. Kenney for reasons 1.4  
(b) and (d).

11. (C) SUMMARY. Appellate briefs have now been filed with the Court of Appeals in the case of U.S. Marine Lance Corporal Daniel J. Smith, who was convicted in December 2006 of raping a Filipino woman at Subic Bay. The Court of Appeals could issue a decision as early as January. Under the terms of the Visiting Forces Agreement, Smith has remained in U.S. custody on Chancery grounds since his arrest in November 2005, and the Embassy community as a whole has provided continuous and significant support, safeguarding Smith's safety, security, and welfare, and ensuring that Smith's rights as a U.S. citizen and the requirements of the Visiting Forces Agreement are respected. The Embassy Public Affairs Office fielded numerous inquiries from the media -- the Smith case was the most-reported story in 2006 -- and was successful in directing public attention toward the judicial process and away from broader issues of U.S.-Philippine relations.

12. (C) The Philippine government has generally respected the Visiting Forces Agreement despite domestic political pressures. The Embassy has remained firm in its interpretation that the Agreement allows us to continue to maintain custody of Smith through any appeals process, including in the Supreme Court. Despite attempts by leftist organizations to use the Smith case to damage U.S.-Philippine relations, our joint efforts with U.S. Pacific Command to highlight humanitarian and community outreach programs of numerous ship visits and military exercises have so far helped maintain public and political support for the U.S.-Philippine military relationship -- and for the Visiting Forces Agreement upon which our counterterrorism cooperation in the Muslim south is based. This message summarizes the most salient events in the case, including U.S. Embassy efforts to ensure Smith's proper treatment in accordance with the Visiting Forces Agreement. END SUMMARY.

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THE CASE TO DATE  
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13. (U) On the evening of November 1, 2005, U.S. Marine Lance Corporal Daniel J. Smith and three other U.S. Marines on leave from the visiting USS Essex went to the Neptune Club in Subic Bay. While there, Smith met a Filipino woman and, after dancing and conversing with her, invited her to ride in a van with him and the other Marines, who were headed back to their ship to meet curfew. Smith later testified that the two of them engaged in consensual sexual intercourse, with Smith wearing a condom. She later claimed that she had been

in and out of consciousness, too drunk to consent. On November 2, she filed rape charges against Smith and the three other Marines.

14. (U) A Naval Criminal Investigation Service agent, who was present in Subic for the visit of the USS Essex, learned about the allegations and on November 3 escorted Smith and the other three Marines to the Subic Bay Metropolitan Authority, where he and local authorities questioned them. When it became clear that the Philippine authorities intended to press charges, a representative of the Joint United States Military Assistance Group asserted the U.S. government's right to custody of the accused under the Visiting Forces Agreement (VFA), and transferred them to safe quarters on Chancery grounds. On December 27, 2005, Philippine prosecutors filed charges of rape against Smith and the other three Marines; the other three Marines were accused of participating in the crime, though not engaging in sexual intercourse with the woman. Smith and the three other Marines remained on Chancery grounds during the trial.

15. (C) Once begun, the trial moved briskly to comply with the one-year period to complete trial proceedings provided for in the VFA. On December 4, 2006, the trial court judge ruled that Smith was guilty of rape and sentenced him to a maximum of 40 years in prison. The three other Marines were acquitted and immediately returned to their unit in Okinawa. The trial court judge ordered local police to take custody of Smith immediately after the verdict and confined him in a Manila jail. However, following intense pressure from U.S. Embassy officials to comply with the terms of the Visiting Forces Agreement, the Philippine government on December 29 returned Smith to U.S. custody, where he has remained until the present. The Philippine government received heavy local

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criticism for forcibly overturning the trial court's order to place Smith in a Manila jail.

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EMBASSY SUPPORT FOR SMITH  
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16. (SBU) Except for the three-week period immediately following the verdict, Smith has been held on Chancery grounds. He is currently in a CONEX-type trailer, with basic amenities and access to fitness and sports facilities. Representatives from the III Marine Expeditionary Forces supervise him at all times. The Regional Security Office has spent significant time and resources ensuring Smith's safety and security, including during Smith's appearances in court and, more recently, during Smith's hospital visits for minor procedures. American Citizen Services officers, who attended all trial sessions, have also kept close watch over the case, liaising with Smith's family and ensuring Smith's rights as a U.S. citizen are respected. The Public Affairs Office has fielded numerous inquiries from the media and has been successful in directing public attention toward the judicial process and away from broader issues of U.S.-Philippine relations. The DCM chairs a weekly meeting of Mission and PACOM representatives to ensure proper coordination and appropriate support to Smith.

17. (SBU) Smith has generally been in good physical condition and spirits since the verdict, though he was hospitalized three times for minor procedures. He recovered well and has exercised regularly throughout his detention. Smith's parents visited him for one week in March and his two brothers visited for another week in July. Smith is also visited by his pastors and lawyers on a weekly basis and by his unit's commanding officer on a quarterly basis. Philippine government officials from the Department of Interior and Local Government and Philippine National Police have also visited Smith on Chancery grounds several times since the verdict, both to assert Philippine jurisdiction over Smith and to counter media speculation that Smith had

either been spirited out of the country or was living in relative luxury at the U.S. Embassy. Such visits have declined and no Philippine officials have visited Smith since July.

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MOST-REPORTED STORY IN 2006  
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18. (SBU) Media coverage of the Smith case through the verdict phase was extensive and generally evenhanded, though a few anti-American articles appeared. In recent months, however, there has been very little coverage, though short articles still appear sporadically. It would be difficult to exaggerate the degree to which the Smith case captured the Philippine public's attention -- the trial garnered front-page space nearly every day and was, statistically, the single most-reported story in the Philippines in 2006 -- and there will almost certainly be a resurgence in coverage when the Court of Appeals issues its verdict. The Mission is considering effective strategies for continuing to manage public opinion on this issue.

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GENERALLY PEACEFUL DEMONSTRATIONS  
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19. (SBU) Since LCpl Smith's conviction, several leftist groups, including student and women's organizations, have held some 15 demonstrations against Smith and/or the Visiting Forces Agreement near the U.S. Embassy. These generally peaceful demonstrations, which have averaged about 45 participants, have been handled effectively by the Philippine National Police, which coordinates closely with the RSO, and have been without incident. Only one demonstration, in January 2007, resulted in a scuffle; several people were reportedly injured in that instance, but none seriously.

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NEXT LEGAL STEPS  
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110. (SBU) Smith's defense filed an appeal with the Court of Appeals immediately after the trial court verdict but, owing to various procedural motions and delays, did not file its appellate brief until May 19, 2007. The Solicitor General filed its appellate brief September 5. Smith's defense now has until October 3 to file a reply -- but could request an

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additional 20 days. The Court of Appeals then has 90 days to issue a decision and could rule as early as mid January. According to Assistant Solicitor General Amy Javier, who is handling the case, the Court of Appeals could delay issuance of a decision for "compelling" reasons, such as complexity of the case. The appellate ruling can then be appealed to the Supreme Court.

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IMPACT ON US-PHILIPPINE RELATIONS AND THE VFA  
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111. (C) The Smith case was the first time the VFA, signed in 1998 and ratified by the Philippine Senate in 1999, was applied to a criminal case. An important provision of the VFA provides that the USG may retain custody of covered personnel until the conclusion of all judicial proceedings and, except for the brief three-week period when a local judge ordered Smith be taken into Philippine custody, the Philippine government has generally respected the terms of the agreement. Senior Philippine government and congressional leaders have raised the possibility of renegotiating the custody provisions of the VFA, or clarifying the scant VFA language on the subject through an exchange of diplomatic notes. This issue has also been raised publicly. We worked with senior government officials

to unite behind the message that any discussion of renegotiation or clarification would be premature until conclusion of all judicial proceedings, including an appeal to the Supreme Court. This approach has largely defused public wrangling that could distract from the merits of the Smith case. Once the case is finally settled, however, the Philippine government may reassert its interest in renegotiating or clarifying the custody provisions of the VFA.

¶12. (C) Leftist organizations have repeatedly used the Smith case to foment anti-American sentiment and push for repeal of the VFA, hoping to damage U.S.-Philippine relations. The joint Mission-PACOM extensive program of ship visits and military exercises, all of which include a strong humanitarian component, have so far helped keep the U.S.-Philippine military relationship strong. Embassy officials will continue to counter efforts of groups seeking to use this case to harm U.S.-Philippine relations by acknowledging the high emotions involved in the case, underscoring that we want justice to prevail through rule of law, and stressing the merits of the Visiting Forces Agreement.

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